

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

KATHLEEN M. MATTOS,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-08734

BOSTON SCIENTIFIC CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is Defendant Boston Scientific Corporation's Motion to Dismiss With Prejudice, filed November 16, 2018. [ECF No. 15]. In the motion, defendant Boston Scientific Corporation ("BSC") moves the court for an order dismissing plaintiff's case with prejudice for failure to serve a Plaintiff Fact Sheet ("PFS") pursuant to deadlines and requirements established by Pretrial Order Nos. 16 and 196. In response, plaintiff, by counsel, opposes the motion. Counsel indicates that he has been unable to file the PFS because plaintiff has not responded to his communication attempts. Counsel asserts that the sanction of dismissal is not appropriate and that plaintiff should be given another chance to comply. [ECF No. 16].

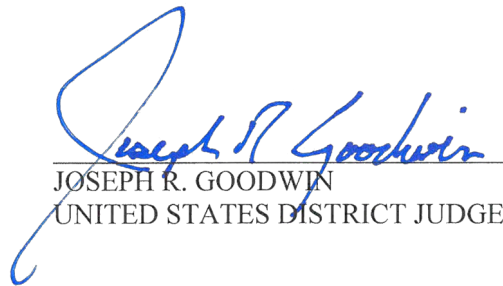
The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that BSC should be dismissed without

prejudice from this case for plaintiff's failure to serve a Plaintiff Fact Sheet in compliance with the court's applicable pretrial orders.

Therefore, the court **ORDERS** that the motion to dismiss [ECF No. 15] is **GRANTED in part** to the extent BSC seeks dismissal and **DENIED insofar as BSC seeks dismissal with prejudice**. The court **ORDERS** that BSC is dismissed without prejudice, and this case is closed and stricken from the court's docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 24, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE